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In re Application of :
BROWN, Devon, et al. :
U.S. Application No.: 10/544,284 :
PCT No.: PCT/EP04/01427 : DECISION ON PETITION
International Filing Date: 16 February 2004 : (37 CFR 1.181)
Priority Date: 18 February 2003 :
Attorney's Docket No.: 70235USPCT :
For: EXPRESSION IN PLANTS OF ANTIBODIES :
AGAINST ENTEROTOXIGENIC :
ESCHERICHIA COLI :

This decision is issued in response to the "Response To Notification Of Missing Requirements Under 35 U.S.C. 371" filed on 27 December 2005, treated in part herein as a petition under 37 CFR 1.181 to confirm the failure to receive an Office communication. No petition fee is required.

BACKGROUND

On 16 February 2004, applicant filed international application PCT/EP04/01427. The international application claimed a priority date of 18 February 2003 and designated the United States. On 02 September 2004, the International Bureau (IB) communicated a copy of the international application to the United States Patent And Trademark Office ("USPTO"). The deadline for payment of the basic national fee was 30 months from the priority date, i.e., 18 August 2005.

On 02 August 2005, applicants filed a transmittal letter for entry into the national stage in the United States which was accompanied by, among other materials, payment of the basic national fee.

On 09 November 2005, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Missing Requirements (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497, the surcharge for filing the declaration later than thirty months after the priority date, additional fees based on the number of pages in the application, and a corrected computer readable form (CRF) of the sequence listing were required. The Notification stated that it was accompanied by a "copy of the marked-up "Raw Sequence Listing" indicating the defects in the previously filed CRF.

On 27 December 2005, applicants filed the Response To Notification Of Missing Requirements Under 35 U.S.C. 371 considered herein. The Response stated that applicants did not receive the marked-up sequence listing that was purportedly attached to the Notification Of Missing Requirements, and that a proper response to the Notification's CRF requirement could therefore not be provided. Applicants request that the marked-up sequence listing be remailed and a new response date be set.

On 09 January 2006, applicants filed a second response to the Notification Of Missing Requirements which included the required declaration in compliance with 37 CFR 1.497 and the required surcharge and fees.

DISCUSSION

Pursuant to section 710.06 of the MPEP, where an Office communication contains some error that affects the applicants' ability to respond to the Office communication sets forth the requirements for a grantable petition to confirm the failure to receive an Office communication:

The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

Here, applicants submission does not include the statements or docket records required to establish that the marked-up "Raw Sequence Listing" was not received. Accordingly, the present record does not support the conclusion that applicants failed to receive the marked-up "Raw Sequence Listing."

CONCLUSION

Applicants' petition to confirm the failure to receive the marked-up "Raw Sequence Listing" mailed with the Notification Of Missing Requirements on 09 November 2005 is **DISMISSED** without prejudice.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Legal Administration for further processing in accordance with this decision, including the mailing of a Notification of Defective Response (Form PCT/DO/EO/916) requiring submission of the necessary sequence listing materials.

A copy of the previously mailed CRF Problem Report that applicants assert was not received is attached to this decision, as a courtesy to applicants.

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Encl.: CRF Problem Report dated 13 August 2005